

(iv) The collection process, including any request by the public agency not to require a class of carriers to collect PFC's, is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law;

(v) The public agency has not been found to be in violation of 49 U.S.C. 47524 and 47526;

(vi) The public agency has not been found to be in violation of 49 U.S.C. 47107(b) governing the use of airport revenue;

(vii) If the public agency has not applied for authority to use PFC revenue, a finding that there are alternative uses of the PFC revenue to ensure that such revenue will be used on approved projects; and

(viii) If applicable, the public agency has submitted a competition plan in accordance with § 158.19.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the projects and alternative uses that may qualify for PFC financing under § 158.15, and (if a PFC level above \$3 is being approved) § 158.17, PFC level, total approved PFC revenue including the amounts approved at \$3 and less, \$4, and/or \$4.50, duration of authority to impose and earliest permissible charge effective date.

(b) *Authority to use PFC revenue on an approved project.* (1) An application for authority to use PFC revenue will be approved in whole or in part only after a determination that—

(i) The amount and duration of the PFC will not result in revenue that exceeds amounts necessary to finance the project;

(ii) The project will achieve the objectives and criteria set forth in § 158.15 except for those projects approved under § 158.18.

(iii) If a PFC level above \$3 is being approved, the project meets the criteria set forth in § 158.17; and

(iv) All applicable requirements pertaining to the ALP for the airport, airspace studies for the project, and the National Environmental Policy Act of 1969 (NEPA), have been satisfied.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the approved projects, PFC

level, total approved PFC revenue, total approved for collection, including the amounts approved at \$3 and less, \$4, and/or \$4.50, and any limit on the duration of authority to impose a PFC as prescribed under § 158.33.

(3) Approval to use PFC revenue to finance a project shall be construed as approval of that project.

(c) *Disapproval of application.* (1) If an application is disapproved, the Administrator notifies the public agency in writing of the decision and the reasons for the disapproval.

(2) A public agency reapplying for approval to impose or use a PFC must comply with §§ 158.23, 158.24, and 158.25.

(d) The Administrator publishes a monthly notice of PFC approvals and disapprovals in the FEDERAL REGISTER.

[Doc. No. 26385, 56 FR 24278, May 29, 1991; 56 FR 30867, July 8, 1991, as amended by Amdt. 158-2, 65 FR 34542, May 30, 2000; Amdt. 158-3, 70 FR 14936, Mar. 23, 2005; Amdt. 158-4, 72 FR 28848, May 23, 2007]

§ 158.30 PFC Authorization at Non-Hub Airports.

(a) *General.* This section specifies the procedures a public agency controlling a non-hub airport must follow when notifying the FAA of its intent to impose a PFC and to use PFC revenue on a project under this section. In addition, this section describes the FAA's rules for reviewing and acknowledging a notice of intent filed under this section. A public agency may notify the FAA of its intent to impose a PFC before or concurrent with a notice of intent to use PFC revenue. A public agency must file a notice of intent in the manner and form prescribed by the Administrator and must include the information required under paragraphs (b), (c), or both, of this section.

(b) *Notice of intent to impose a PFC.* This paragraph sets forth the information a public agency must file to notify the FAA of its intent to impose a PFC under this section. The public agency must file a separate notice of intent for each airport at which the public agency plans on imposing a PFC. An authorized official of the public agency must sign the notice of intent and, unless authorized by the Administrator, must include:

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(1) A completed FAA Form 5500–1, PFC Application (latest edition) without attachments except as required below;

(2) Project information (in the form and manner prescribed by the FAA) including the project title, PFC funds sought, PFC level sought, and, if an existing Airport Improvement Program (AIP) grant already covers this project, the grant agreement number.

(3) If an existing AIP grant does not cover this project, the notice of intent must include the information in paragraph (b)(2) of this section as well as the following:

(i) Additional information describing the proposed schedule for the project,

(ii) A description of how this project meets one of the PFC objectives in § 158.15(a), and

(iii) A description of how this project meets the adequate justification requirement in § 158.15(c).

(4) A copy of any comments received by the public agency during the air carrier consultation and public comment processes (§§ 158.23 and 158.24) and the public agency's response to any disagreements.

(5) If applicable, a request to exclude a class of carriers from the requirement to collect the PFC (§ 158.11).

(6) A signed statement certifying that the public agency will comply with the assurances set forth in Appendix A to this part.

(7) Any additional information the Administrator may require.

(c) *Notice of intent to use PFC revenue.* A public agency may use PFC revenue only for projects included in notices filed under this paragraph or approved under § 158.29. This paragraph sets forth the information that a public agency must file, unless otherwise authorized by the Administrator, in its notice of intent to use PFC revenue to finance specific projects under this section.

(1) A notice of intent to use PFC revenue filed concurrently with a notice of intent to impose a PFC must include:

(i) The information required under paragraphs (b)(1) through (7) of this section;

(ii) A completed FAA Form 5500–1, Attachment G, Airport Layout Plan, Airspace, and Environmental Findings (latest edition) for all projects not in-

cluded in an existing Federal airport program grant.

(2) A notice of intent to use PFC revenue where the FAA has previously acknowledged a notice of intent to impose a PFC must:

(i) Be preceded by further consultation with air carriers and the opportunity for public comment under §§ 158.23 and 158.24 of this part. However, a meeting with the air carriers is optional if all information is the same as that provided with the impose authority notice;

(ii) Include a copy of any comments received by the public agency during the air carrier consultation and public comment processes (§§ 158.23 and 158.24) and the public agency's response to any disagreements or negative comments; and

(iii) Include any updated and changed information:

(A) Required by paragraphs (b)(1), (2), (5), (6), and (7) of this section; and

(B) Required by paragraph (c)(1)(ii) of this section.

(d) *FAA review of notices of intent.* (1) The FAA will review the notice of intent to determine that:

(A) The amount and duration of the PFC will not result in revenue that exceeds the amount necessary to finance the project(s);

(B) Each proposed project meets the requirements of § 158.15;

(C) Each project proposed at a PFC level above \$3.00 meets the requirements of § 158.17(a)(2) and (3);

(D) All applicable airport layout plan, airspace, and environmental requirements have been met for each project;

(E) Any request by the public agency to exclude a class of carriers from the requirement to collect the PFC is reasonable, not arbitrary, nondiscriminatory, and otherwise complies with the law; and

(F) The consultation and public comment processes complied with §§ 158.23 and 158.24.

(2) The FAA will also make a determination regarding the public agency's compliance with 49 U.S.C. 47524 and 47526 governing airport noise and access restrictions and 49 U.S.C. 47107(b) governing the use of airport revenue.

Finally, the FAA will review all comments filed during the air carrier consultation and public comment processes.

(e) *FAA acknowledgment of notices of intent.* Within 30 days of receipt of the public agency's notice of intent about its PFC program, the FAA will issue a written acknowledgment of the public agency's notice. The FAA's acknowledgment may concur with all proposed projects, may object to some or all proposed projects, or may object to the notice of intent in its entirety. The FAA's acknowledgment will include the reason(s) for any objection(s).

(f) Public agency actions following issuance of FAA acknowledgment letter. If the FAA does not object to either a project or the notice of intent in its entirety, the public agency may implement its PFC program. The public agency's implementation must follow the information specified in its notice of intent. If the FAA objects to a project, the public agency may not collect or use PFC revenue on that project. If the FAA objects to the notice of intent in its entirety, the public agency may not implement the PFC program proposed in that notice. When implementing a PFC under this section, except for § 158.25, a public agency must comply with all sections of part 158.

(g) *Acknowledgment not an order.* An FAA acknowledgment issued under this section is not considered an order issued by the Secretary for purposes of 49 U.S.C. 46110 (Judicial Review).

(h) *Sunset provision.* This section will expire May 9, 2008.

[Doc. No. FAA-2004-17999, 70 FR 14936, Mar. 23, 2005]

§ 158.31 Duration of authority to impose a PFC after project implementation.

A public agency that has begun implementing an approved project may impose a PFC until—

(a) The charge expiration date is reached;

(b) The total PFC revenue collected plus interest earned thereon equals the allowable cost of the approved project;

(c) The authority to collect the PFC is terminated by the Administrator under subpart E of this part; or

(d) The public agency is determined by the Administrator to be in violation of 49 U.S.C. 47524 and 47526, and the authority to collect the PFC is terminated under that statute's implementing regulations under this title.

[Doc. No. 26385, 56 FR 24278, May 29, 1991, as amended by Amdt. 158-2, 65 FR 34542, May 30, 2000; Amdt. 158-4, 72 FR 28849, May 23, 2007]

§ 158.33 Duration of authority to impose a PFC before project implementation.

(a) A public agency shall not impose a PFC beyond the lesser of the following—

(1) 2 years after approval to use PFC revenue on an approved project if the project has not been implemented, or

(2) 5 years after the charge effective date; or

(3) 5 years after the FAA's decision on the application (if the charge effective date is more than 60 days after the decision date) if an approved project is not implemented.

(b) If, in the Administrator's judgment, the public agency has not made sufficient progress toward implementation of an approved project within the times specified in paragraph (a) of this section, the Administrator begins termination proceedings under subpart E of this part.

(c) The authority to impose a PFC following approval shall automatically expire without further action by the Administrator on the following dates:

(1) 3 years after the charge effective date; or 3 years after the FAA's decision on the application if the charge effective date is more than 60 days after the decision date unless—

(i) The public agency has filed an application for approval to use PFC revenue for an eligible project that is pending before the FAA;

(ii) An application to use PFC revenue has been approved; or

(iii) A request for extension (not to exceed 2 years) to submit an application for project approval, under § 158.35, has been granted; or

(2) 5 years after the charge effective date; or 5 years after the FAA's decision on the application (if the charge effective date is more than 60 days